

### **REMARKS**

Upon further review, the Examiner has issued an additional restriction requirement of the present application to the following patentably distinct species:

Species A: Where the emulsifier is the non-ionic emulsifier polyoxyethylene (20) sorbitan monolaurate.

Species B: Where the emulsifier is the zwitterionic emulsifier phosphatidylcholine.

Species C: Where the emulsifier is the anionic emulsifier n-dodecyl sulfate.

Species D: Where the emulsifier is modified starch, gum Arabic, or cross-linked copolymers of acrylic acid and a hydrophobic comonomer.

It is the Examiner's position that the species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

The Examiner also states that the Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for the prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable, the Examiner indicates that there currently appears to be no generic claim.

The Examiner states that there is an examination and search burden for these patentable distinct species due to their mutually exclusive characteristics. The species require a different field of search and that the prior art applicable to one species would not likely be applicable to another species and that the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

In response to the request, Applicants elect with traverse Species A where the emulsifier is the non-ionic emulsifier polyoxyethylene (20) sorbitan monolaurate. In addition to Claims 27, 28 and 32 Applicants have withdrawn Claims 4, 5, 7, 8, 9 and 10 directed to the non-elected invention. Applicants have cancelled Claim 6 and have amended Claims 1, 11 and 18. Applicants reserve the right to file divisional applications directed to the unelected subject matter.

It is the Applicants position that species of emulsifiers in the claimed invention does put an undue burden on the Examiner.

### **CONCLUSION:**

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of rejections, and allowance of all claims now present in the application.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to the Deposit Account No. 12-1295.

Respectfully submitted,

/Elizabeth M. Quirk/

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